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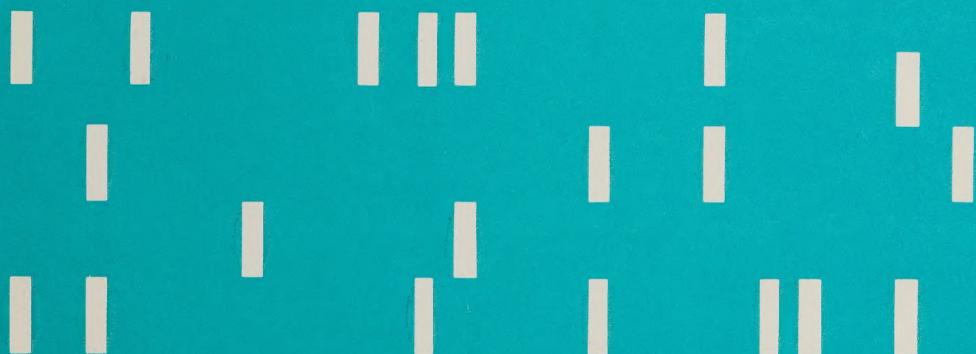
Publications

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DOING BUSINESS IN CANADA

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3
DOING BUSINESS IN CANADA

Patents, Trade Marks, Industrial Designs and Copyrights



Government
of Canada

Gouvernement
du Canada

2
Dept. of
Industry, Trade
and Commerce

Industrie
et Commerce



FOREWORD

Every effort has been made to reflect accurately the legislation in force at the time of preparing this publication. It is hoped this booklet will prove a useful guide, however it should be appreciated that many of the laws mentioned herein contain considerable detail. Since the text refers only to basic principles, it is suggested that an enquirer consult with relevant authorities or solicitors, or both, when seeking precise and detailed advice on specific problems.

Titles of publications available from the Department of Industry, Trade and Commerce in the series "Doing Business in Canada" are:

- No. 1 — The Business Environment
- No. 2 — Forms of Business Organization in Canada
- No. 3 — Canadian Customs Duties
- No. 4 — Taxation — Income, Business, Property
- No. 5 — Taxation — Sales, Excise, Commodity
- No. 6 — Labour Legislation
- No. 7 — Construction and Equipment Standards
- No. 8 — Federal Incentives to Industry
- No. 9 — Patents, Trade Marks, Industrial Designs and Copyrights
- No. 10 — Financing Canadian Industries.

Further information is available from:

The Business Centre (34/2)
Department of Industry, Trade and Commerce
235 Queen Street
Ottawa, Ontario K1A 0H5
Tel: Call collect (613) 995-5771
Telex: 053-4123

Revised 1979

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INTRODUCTION

Since January, 1973, the administration of legislation covering patents, trade marks, industrial designs and copyrights has been consolidated under the Bureau of Intellectual Property of the federal Department of Consumer and Corporate Affairs. The Bureau comprises the Patent Office, the Trade Marks Office, the Copyright and

Industrial Design Office, the Research Branch which is responsible for updating Intellectual Property legislation and the Technical Advisory Services Branch which provides advice and guidance on the Intellectual Property system to the Canadian business community.

DISTRICT OFFICES

District Offices are maintained by the Department of Consumer and Corporate Affairs in Halifax, Quebec City, Montreal, Toronto, London, Winnipeg, Regina, Edmonton, Calgary and Vancouver (see Appendix A). These offices will accept for onward transmission to Ottawa any documents required to be filed with the Commissioner of Patents or the Registrar of Trade Marks in relation to patents, copyrights and industrial designs.

The date of receipt of such documents for official purposes is the date on which an envelope containing the documents and addressed to the Commissioner or Registrar is received and date stamped at the District Office. Inquiries of a general nature concerning patents, trade marks, industrial designs and copyrights may be directed to the District Offices or to the Bureau of Intellectual Property in Hull, Quebec.

PATENTS

A patent is a right granted by the government to an inventor to exclude others from using his invention in Canada. The term of a patent is 17 years, after which anyone may use the invention.

Patents encourage inventions by protecting inventors against infringers for a limited time. They also encourage disclosure of inventions. A patentee must provide a full description of his invention, which is published immediately when the patent is granted. The publication of inventions stimulates others to make similar inventions or further improvements and prevents the loss of inventions that might otherwise be kept secret and die with the inventor, or never become generally available.

The patentee, himself, must protect his interest against infringers. The patent permits him to resort to the courts to collect damages and obtain injunctions against further infringement. In this manner, he may prevent others from exploiting his invention in Canada and from importing it from abroad.

Patents are granted for inventions, not for workshop improvements or simple alterations to products already patented. An invention is a technological development or improvement that would not have been obvious beforehand to spe-

cialists in the technology being considered. An invention involves some unobvious and unexpected results — the product of inventive ingenuity. It may be a new machine, article, process, chemical compound or composition of matter. Patents are not granted for literary and artistic works (which may be copyrighted) or for designs (which may be registered under the Industrial Design Act).

To obtain a patent for an invention, the inventor, or his assignee, must file an application with the Commissioner of Patents, Ottawa-Hull, Canada. The application must meet all the requirements of the Patent Act and the Patent Rules. For example, patents are not granted if the invention was published anywhere in the world more than two years before the application was filed in Canada. The application will also be refused if the invention has been used publicly or sold in Canada more than two years before the application is filed. Consequently, it is important to file early.

Other provisions and formalities must also be satisfied. There is a filing fee of \$150, and a further fee of \$300 on allowance of a patent. To obtain a filing date, it is necessary to submit a petition, a full description of the invention (with claims), the filing fee and any drawings referred

to in the description. Drawings are usually required when the invention can be graphically illustrated. Other required documents must be supplied within one year of the filing date if not submitted at the time of filing.

While an application may be filed and prosecuted by an inventor or his legal representative, it is usually advisable to employ the services of a registered patent agent. Such agents are trained and qualified by examination to represent inventors. A register of such agents is maintained at the Patent Office and lists of those entitled to practise in Canada may be obtained free of charge.

Patent agents are trained to search technical literature and patents to determine if the invention is already known and therefore unpatentable; prepare specifications and claims that satisfy requirements of the Patent Act and provide adequate protection for the invention; and handle prosecution of the application before the Patent Office. They provide information and advice on filing in foreign countries, where patent laws differ in many aspects from those in Canada. A Canadian patent gives protection in Canada only, thus it may be desirable to file abroad to obtain greater protection.

The patent agent's skill in drafting the description of the invention and claims is particularly important, since the value of a patent depends largely on how this is done. The description of the invention must be such that any person skilled in the subject can understand it and receive sufficient information to carry out the invention without recourse to the inventor. The claims do not, as is sometimes supposed, list the advantages of the invention. Instead, they provide concise statements of what the invention is, phrased so as to avoid claiming what is already known, while still encompassing everything to which the inventor is entitled.

Once filed, applications are examined by one or more of the 200 scientists and engineers employed in the Patent Office as patent examiners. The examiner determines whether the product is new, useful, and a result of inventive ingenuity. Prior patents and technical literature are searched to check for novelty. The application is also examined for conformity to legal requirements and formalities.

In the event that others have also filed for the same invention, conflict proceedings must be conducted to determine who is the first inventor. Examination, in some instances, takes several years, particularly when prosecution is involved.

The applicant is given the opportunity to amend his application if it is not acceptable, or to try and persuade the examiner to change his views. Rejections may be appealed to the Federal and Supreme Courts. Sometimes patents are declared invalid by the courts, usually upon presentation of fresh evidence not available during prosecution before the Patent Office.

The examiner does not test an invention to determine how practical it may be and the grant is not an official endorsement of the invention. Many inventions do not prove as useful or practical as the inventor had hoped.

Nearly 26,000 applications are filed each year in Canada, and 21,000 patents granted. Since the first Canadian patent was granted in 1791, more than one million have been issued. Every year more than 21,000 patents fall into the public domain.

In Canada, annual fees are not required (as in most European countries) to keep a patent in force. However, patented inventions must be worked in this country within three years of patenting.

If a patentee does not work his invention in Canada, or hinders manufacture in Canada by importation from abroad, or if he refuses to grant a licence, contrary to public interest, or unfairly prejudices any industry in Canada, the Commissioner of Patents may grant licences to others to use the invention, or, in some cases, revoke the patent. By recent legislation, compulsory licences may also be granted (1) to import medicines manufactured abroad and (2) for all inventions intended for use in the preparation of foods or drugs as soon as the patent is issued. Licence fees are intended to secure a reasonable financial reimbursement for the patentee, while safeguarding the public interest.

Foreign patents do not provide protection in Canada, though foreign inventors can obtain Canadian patents. Similarly, Canadian patents are valid in Canada only, but Canadians may obtain patents abroad. Each country in the world has developed its own patent system based on the same essential concept, but differing in details that suit its own economic conditions and requirements.

A patentee is not entitled to use his patented invention if it infringes a prior unexpired patent. On the other hand, he may sell all or part of his rights in the invention to others. He cannot prevent others from using his invention while his application is pending, but in cases of infringement, the Patent Rules provide for special action

to speed up prosecution.

Before producing new products, it is important for Canadian manufacturers to ascertain if any patents will be infringed, and if it is possible to obtain a licence for those that will. At other times, a manufacturer may be threatened with infringement suits. In both these situations the advice of a patent agent is important. In all cases of possible infringement it is necessary to consider whether the patent is valid and will actually be infringed.

The existing patent literature holds the answers to many of the technical problems facing industry today. Many research programs have duplicated work already reported in patent specifications of one country or another. Even if a specific problem does not require solution, a systematic program for reviewing patent literature frequently shows methods of improving existing processes and techniques or generates further ideas.

Patent Office facilities are available to Canadian industry to find such information. Copies of all Canadian patents are stored at the Patent Office, classified by subject matter to simplify searching. While applications are kept secret, all issued Canadian patents are available for public search, free of charge. Copies of each patent may be purchased at a fee of two dollars per copy. Most foreign patents are on file and may be studied and photocopies ordered in the Public Search Room of the Patent Office Library, Place du Portage, 68 Victoria Street, Hull, Quebec.

The Patent Office Record is published every Tuesday and lists all inventions patented in Canada during the week. It also provides information about classification of patents for search purposes, ordering copies of patents, filing procedures, patents available for licence or sale, expiring patents and notices of the Commissioner of Patents.

Copies of the Record are available at most provincial, university and larger municipal libraries in Canada. Foreign Patent Offices publish similar gazettes, copies of which are on file in the Patent Office Library. Enquiries about patents may be made at the District Offices of the Department of Consumer and Corporate Affairs across Canada or by writing directly to The Commissioner of Patents, Ottawa-Hull, Canada K1A 0E1.

Inventors wishing to sell or license issued Canadian patents may use the advertising services of the Patent Office Record, which permits a listing with pertinent information for a fee of \$5 per week for each patent. If an applicant specifies at time of allowance that the patent to be issued to him is available for licence, this will be indicated in the Record free of charge.

Canadian patents owned by foreigners are frequently licensed to manufacturers in this country. An increasing number of foreign principals wish to enter the Canadian market by licence and royalty agreement. Under such arrangements the facilities of Canadian companies are used for production and distribution, with payments made to the foreign principals based on a percentage of sales or a fixed charge for each unit made.

The Department of Industry, Trade and Commerce provides a service designed to bring the principals together. Foreign residents may submit their proposals to the nearest Canadian Government Trade Commissioner, or to the Business Centre, Department of Industry, Trade and Commerce in Ottawa. Details should be provided about the nature of the product in question, production costs and financial arrangements desired. The Department of Industry, Trade and Commerce will contact Canadian manufacturers directly and provide nationwide publicity in its monthly New Products Bulletin.

Patent protection in Canada is important. Without patents, it is difficult to arouse interest in licence and royalty arrangements. In addition, patents protect Canadian manufacturers against others who may manufacture the article in question, either by copying it directly, or resorting to foreign patent literature for production information.

For Canadians holding foreign patents, the Department of Industry, Trade and Commerce provides assistance, through Canadian Trade Commissioners, in licensing patents abroad. Address inquiries to:

The Business Centre
Department of Industry,
Trade and Commerce
235 Queen Street
Ottawa, Canada K1A 0H5

TRADE MARKS

A trade mark is a mark used to distinguish wares or services manufactured, sold, leased, hired or performed by one person, or in special circumstances a group of persons, from those of others. Generally speaking, the right to a trade mark is created by use in Canada, not by registration, i.e. although an application for registration may be based on intention to use the trade mark in Canada in the future, registration will not be issued until actual use in Canada has commenced. An exception is made for trade marks that have been made known in Canada or registered and used abroad in a country that is a member of the International Convention for the Protection of Industrial and Intellectual Property. Registration serves to confirm the title, which has (with the exceptions mentioned) already been established by use in Canada.

The adoption and use, without consent, of certain kinds of marks as trade marks is prohibited, i.e. royal, vice-regal and government arms, crests, flags; emblems of the Red Cross; national flags and emblems; scandalous, obscene matter; and portraits or signatures of living individuals. Such marks are also prohibited from registration. Also prohibited from registration are words that are primarily merely names or surnames; marks that are clearly descriptive or deceptively misdescriptive with respect to the character, quality, composition or source of the goods or services; marks that are the name of the wares or services; and marks that are confusingly similar to marks already registered.

To register a trade mark, an application for registration accompanied by a filing fee of \$100 must be submitted to the Registrar of Trade Marks. No special form is required, but the ap-

plication must be filled out according to rules available from the Registrar of Trade Marks or from any of the District Offices listed in Appendix A. The Trade Marks Office will examine the application and if the mark is found to be registrable, the application will be advertised in the Trade Marks Journal.

Within one month of being advertised anyone may institute proceedings before the Registrar in opposition to the registration of the mark. If the registration is not opposed, or if the Registrar overrules all oppositions, the mark will be registered and remain on the register for a period of 15 years. The registration may be renewed any number of times for further periods of 15 years, but may be removed from the register by the Registrar if use of the mark in Canada is discontinued.

While an application may be filed and prosecuted by the applicant or his legal representative, the Trade Marks Office advises applicants to employ the services of a registered trade mark agent. Such agents have been trained and qualified by examination to represent applicants. A register of all registered agents is maintained in the Trade Marks Office, and lists of those entitled to practise may be obtained free of charge.

The trade mark registers, indexes and application files may be consulted by the public at the Trade Marks Office, Place du Portage, 68 Victoria Street, Hull, Quebec. The Registrar is prohibited from making searches or expressing opinions except in relation to an application that is pending before him. He may, however, answer general inquiries. Address inquiries to:

The Registrar of Trade Marks
Ottawa-Hull, Canada, K1A 0E1

INDUSTRIAL DESIGNS

The object of Canadian design legislation is to encourage the creation and production of articles of manufacture which possess original features of shape, configuration, pattern and/or ornament, by assuring protection to those designs for a limited time. The protection afforded by the Industrial Design Act extends to those features as applied to articles of manufacture.

Designs have been registered for a wide variety of articles, such as wearing apparel, fabrics, wallpaper, furniture, jewelry, bottles, toys, electrical appliances and office machines.

Details or features of the construction, mode of operation or functioning of an article may be patentable as an invention, but cannot be part of what is registered as an industrial design under the Industrial Design Act.

An industrial design may be registered in Canada if it is not identical or similar to others already registered. If a design has been made public in Canada before being registered, it can be registered any time up to one year from the date it was made public. The registered owner of an industrial design has the sole right to use the

design in Canada for a period of five years, renewable for a further period of five years.

The registration of an industrial design requires the filing of an application with the Commissioner of Patents and payment of a \$100 fee. Application forms are available from the Commissioner of Patents or any of the District Offices listed in Appendix A. A search of earlier registered designs will be made by the Industrial

Design Office. If the design is found to be original, it will be registered and a certificate of registration issued to the owner. The registers of designs may be consulted by the public at the Industrial Design Office, Place du Portage, 68 Victoria Street, Hull, Quebec. Address inquiries to:

The Commissioner of Patents
Ottawa-Hull, Canada K1A 0E1

COPYRIGHTS

Upon creation, every original literary, dramatic, musical or artistic work is automatically protected by copyright. These works include paintings, drawings, sculptures, engravings, photographs, books, maps, charts, films, encyclopedias, newspapers, reviews, magazines, plays and architectural plans. They also include contrivances that mechanically reproduce sound, such as records, open-reel tapes and cassettes.

The Copyright Act grants to the originator or author of any such work the sole right to produce or reproduce the work in any material form and to perform the work in public, in Canada, provided he was a British subject or citizen of a country that adheres to the International Copyright Convention when he produced the work; and, in the case of a published work, if the work was first published within Her Majesty's Realms and Territories or in a Convention country. The term of copyright for written works is the life of the author plus 50 years; for sound recordings and photographs, it's 50 years from the date of the original plate or negative.

The Copyright Act does not apply to designs that can be registered under the Industrial Design Act. For instance, if an artistic work is reproduced or expected to be reproduced by an industrial process in a quantity exceeding 50, it loses its copyright protection. This applies, for example, to designs for printed paper hangings, textile goods and figures. These works should be registered under the Industrial Design Act, bearing in mind that registration must take place within one year of publication of the design in Canada.

On August 10, 1962, Canada ratified the Universal Copyright Convention, which affords automatic protection for unpublished works in U.C.C. countries, including the United States. Under this convention, an original work published in Canada automatically receives copyright protection in the U.S. and other U.C.C. countries provided all copies bear the symbol ©, accompanied by the name of the proprietor of the copyright and the year of publication.

While it is not a statutory requirement to register copyright, it is advantageous because it provides *prima facie* evidence of copyright ownership. To register copyright, an applicant must send his application to the Commissioner of Patents, with his name, title of the work, and registration fee of \$10 payable to the Receiver General of Canada. Application forms are available from the Commissioner of Patents or from any of the District Offices listed in Appendix A.

Copies of the work to be registered are not required and will be returned if supplied. However, two copies of the first printing of every book printed in Canada must be sent to the National Library of Canada, Public Archives, 395 Wellington Street, Ottawa, Ontario K1A 0N3.

The Registrar of Copyright may be consulted by the public at the Copyright Office, Place du Portage, 68 Victoria Street, Hull, Quebec.

Address inquiries to:

The Commissioner of Patents
Ottawa-Hull, Canada K1A 0E1

ADDITIONAL PUBLICATIONS

Additional publications giving general information are available from any of the District Offices listed in Appendix Z, or from: The Bureau of

Intellectual Property, Ottawa/Hull, Canada K1A 0E1.

Copies of the statutes, namely the Patent

Act and Rules, the Trade Marks Act and Rules, the Industrial Design Act and Rules, and the Copyright Act and Rules may be purchased at

nominal cost from:

Department of Supply and Services
Printing and Publications
Place du Portage
Phase III, 6B3
Hull, Quebec
K1A 0S9

INVENTIONS FOR INDUSTRY

CANADIAN PATENTS AND DEVELOPMENT LIMITED (CPDL) is a Crown Corporation that was established in 1947 by the National Research Council of Canada to handle patenting and licensing of inventions resulting from its research. Since then the company has grown to the point where it now handles such matters for practically all Canadian Government departments and agencies, universities and provincial research establishments. Since May 1978 CPDL reports to the Crown through the Minister for Industry, Trade and Commerce. CPDL is essentially self-supporting and operates under a Board of Directors drawn from industry, government and universities.

CPDL is a central clearing house for inventions originating in a wide variety of laboratories. These are advertised to industry by various means such as trade shows, technical publications, and the INVENTIONS CATALOG which describes about 500 inventions available for licensing. Personal visits to CPDL are encouraged and often result in the discovery of unpublished items of interest, either in existing inventions or research in progress.

Inventions that have been licensed to indus-

try by CPDL include: crash position indicator, ear defender, helicopter hauldown, instant mashed potatoes, perforated breakwater, position homing indicator, stereo earphones, TEA Laser, Vinblastine (pharmaceutical), and vortex arc lamp.

Inventions are licensed in accordance with accepted business practice within the industry concerned, with the terms of each licence agreement negotiated separately.

If you want to make sure that your firm is not missing out on a new product possibility you should be on CPDL's INVENTIONS CATALOG mailing list.

To receive a copy of the INVENTIONS CATALOG and twice yearly supplements, send your cheque for \$5.00 (to cover handling costs) payable to Canadian Patents and Development Limited to:

INVENTIONS CATALOG
Canadian Patents and
Development Limited
275 Slater Street
Ottawa, Ontario, Canada
K1A 0R3

APPENDIX A**DISTRICT OFFICES OF THE DEPARTMENT OF CONSUMER
AND CORPORATE AFFAIRS****St. John's, Newfoundland**

Consumer and Corporate Affairs Canada
5th Floor
Sir Humphrey Gilbert Building
Duckworth Street
St. John's, Newfoundland A1C 1G4

Corner Brook, Newfoundland

Consumer and Corporate Affairs Canada
Herald Tower
5th Floor
Herald Avenue
P.O. Box 493
Corner Brook, Newfoundland A2H 4B7

Halifax, Nova Scotia

Consumer and Corporate Affairs Canada
6th Floor
Montreal Tower
5151 George Street
Halifax, Nova Scotia B3J 1M5

Sydney, Nova Scotia

Consumer and Corporate Affairs Canada
Room 245
Federal Building
Corner Dorchester and Charlotte Streets
Sydney, Nova Scotia B1P 5Z2

Charlottetown, Prince Edward Island

Consumer and Corporate Affairs Canada
3rd Floor
Room 4
Dominion Building
Charlottetown, Prince Edward Island C1A 4A9

Moncton, New Brunswick

Consumer and Corporate Affairs Canada
2nd Floor
Norwick Union Building
100 Cameron Street
Moncton, New Brunswick E1C 5Y6

Fredericton, New Brunswick

Consumer and Corporate Affairs Canada
2nd Floor
633 Queen Street
Fredericton, New Brunswick E3B 1C3

Quebec, Quebec

Consumer and Corporate Affairs Canada
Bank of Montreal Building
800 Carré d'Youville
18th Floor
Room 1801
Quebec, Quebec G1L 3P4

Montreal, Quebec

Consumer and Corporate Affairs Canada
1200 Place Dupuis
855 St. Catherine Street East
Montreal, Quebec H2L 4N4

Sherbrooke, Quebec

Consumer and Corporate Affairs Canada
25 Wellington Street North
Room 412
Sherbrooke, Quebec J1K 5B1

Trois-Rivières, Quebec

Consumer and Corporate Affairs Canada
Royal Trust Building
1300 Notre-Dame Street
2nd Floor
Trois-Rivières, Quebec G9A 4X3

Ottawa, Ontario

Consumer and Corporate Affairs Canada
Brunswick Building
240 Bank Street
Ottawa, Ontario K2P 1X2

Toronto, Ontario

Consumer and Corporate Affairs Canada
4th Floor
Global House
480 University Avenue
Toronto, Ontario M5G 1V2

Hamilton, Ontario

Consumer and Corporate Affairs Canada
Union Gas Building
3rd Floor
20 Hughson Street South
Hamilton, Ontario L8N 2A1

London, Ontario

Consumer and Corporate Affairs Canada
781 Richmond Street
London, Ontario N6A 3H4

Winnipeg, Manitoba

Consumer and Corporate Affairs Canada
201 - 260 St. Mary Avenue
Winnipeg, Manitoba R3C 0M6

Regina, Saskatchewan

Consumer and Corporate Affairs Canada
2212 Scarth Street
Regina, Saskatchewan S4P 2V6

Saskatoon, Saskatchewan

Consumer and Corporate Affairs Canada
279 - 3rd Avenue North
Saskatoon, Saskatchewan S7K 2H8

Calgary, Alberta

Consumer and Corporate Affairs Canada
1008 - 7th Avenue
Calgary, Alberta T2P 1A7

Edmonton, Alberta

Consumer and Corporate Affairs Canada
Oliver Building
10225 - 100 Avenue
Edmonton, Alberta T5J 0A1

Vancouver, British Columbia

Consumer and Corporate Affairs Canada
P.O. Box 10059
Pacific Centre
700 West Georgia Street
Vancouver, British Columbia V7Y 1C9

Victoria, British Columbia

Consumer and Corporate Affairs Canada
1007 Fort Street
Victoria, British Columbia V7Y 1C9

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